

PT 06-41

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

FAMILY FOCUS, INC.,

Applicant

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

**Docket No: 05 PT 0055
Real Estate Tax Exemption**

For 2003 Tax Year

P.I.N. 10-13-201-027 (part of)

Cook County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Brian S. Maher, Weiss, DuBrock & Doody, on behalf of Family Focus, Inc.; Mr. Shepard Smith, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether part of Cook County Parcel, identified by P.I.N. 10-13-201-027 (hereinafter the “subject property”), should be exempt from 2003 property taxes under 35 ILCS 200/15-65 of the Property Tax Code, in which all property actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit, is exempted from real estate taxes.

This controversy arose as follows: On October 22, 2004, Family Focus, Inc. (hereinafter “Family”) filed a Property Tax Exemption Complaint with the Cook County Board of Review seeking exemption from 2003 real estate taxes for the subject property. Dept. Ex. No. 1. The Board reviewed Family’s Complaint and recommended that the

exemption be denied. The Department of Revenue of the State of Illinois (hereinafter the “Department”) partially accepted the Board’s recommendation in a determination dated June 3, 2005 finding that P.I.N. 10-13-201-027 was exempt for 100% of the 2003 assessment year “except the following areas and a proportionate amount of land and parking. Basement Room 007; 1st floor rooms 102, 103, 104, 105, 108 & 109; 2nd floor rooms 203, 204, 205, 206 and 206A,” “property not in exempt use.” On July 27, 2005, Family filed an appeal of the Department’s denial of exemption for the rooms listed above and a proportionate amount of land and parking.

On September 26, 2006, a formal administrative hearing was held with Joanne Avery, Supervisor of Family’s after school program, and Sandra Hill, Director of Family Focus, testifying. At the evidentiary hearing, counsel for Family stated that Family was not contesting the denial of exemption for rooms 102, 203, 206, 206A as these rooms were “vacant and unused during 2003” and basement room 007. Tr. p. 6. Accordingly, the only rooms still at issue at hearing were 1st floor rooms 103, 104, 105, 108 and 109 and 2nd floor rooms 204 and 205. Tr. p. 7. Following a review of the testimony and evidence, it is recommended that 1st floor rooms 103, 104, 105, 108 and 109 be exempt for 100% of the 2003 assessment year and the Department’s denial of exemption for 2nd floor rooms 204 and 205 be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that certain rooms on the subject property and a proportionate amount of land and parking were not in exempt use during 2003. Tr. pp. 10-11; Dept. Ex. No. 1.

2. Family Focus is a community family support center which services the west side of Evanston. Tr. p. 23.
3. Family's after school program is from 3:00 to 6:00 p.m., Monday through Friday, and during the summer from 9:00 a.m. to 5:00 p.m. Room 103 is used for grades 5 and 6; rooms 104 and 105 are breakout rooms; room 108 is used for grades 3 and 4; room 109 is used for grades 7 and 8. Breakout rooms are used when there are more than 30 children in another room or when quiet space is needed. Tr. pp. 15-17, 19, 20-21; App. Ex. No. 1.
4. Other than the breakout rooms, the rooms were used for homework. Also offered at different times in the rooms were drug awareness and abstinence workshops, arts and crafts, discussion groups, career development, community involvement, cultural and educational programs and character-building programs. Tr. pp. 19-21, 23.
5. Students in the after school program were referred from schools and social service agencies in Evanston. There is no charge for the program. Approximately 100 children participate daily. Tr. pp. 20-21, 23-24.
6. Rooms 204 and 205 were leased to "Evanston Black Cats Wrestling Club" in 2003. Tr. pp. 26, 29.

CONCLUSIONS OF LAW:

An examination of the record establishes that Family has demonstrated, by the presentation of testimony and through exhibits and argument, evidence sufficient to warrant exempting 1st floor rooms 103, 104, 105, 108 and 109 for 100% of the 2003 assessment year. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property which is both: (1) owned by "institutions of public charity" and (2) "actually and exclusively used for charitable or beneficent purposes" (35 ILCS 200/15-65). Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968). Ownership of the subject property is not at issue in this proceeding because the Department found in its June 3, 2005 determination that some of the subject property was exempt for 100% of the 2003 assessment year, thereby determining that the subject property was, in fact, owned by an institution of public charity. The only issue in this proceeding is whether 1st floor rooms 103, 104, 105, 108

and 109 and 2nd floor rooms 204 and 205 were actually and exclusively used for charitable or beneficent purposes in 2003.

Family Focus is a community family support center which services the west side of Evanston. Family Focus has programs that service the community of Evanston, “primarily the children, but also the adults.” Tr. p. 23. Based on the testimony and evidence admitted at the evidentiary hearing, I conclude that Family’s after school program, held in 1st floor rooms 103, 104, 105, 108 and 109, furthers the organization’s charitable objectives and that these rooms were used for charitable purposes in 2003. Students in the after school program were referred from schools and social service agencies in Evanston. There is no charge for the program. Approximately 100 children participate daily. Tr. pp. 20-21, 23-24.

Joanne Avery was the supervisor of the after school program in 2003 and testified as follows. Tr. pp. 15-16. Family’s after school program is from 3:00 to 6:00 p.m., Monday through Friday and during the summer from 9:00 a.m. to 5:00 p.m. Room 103 is used for grades 5 and 6; rooms 104 and 105 are breakout rooms; room 108 is used for grades 3 and 4; room 109 is used for grades 7 and 8. Breakout rooms are used when there are more than 30 children in another room or when quiet space is needed. Tr. pp. 15-17, 19, 20-21; App. Ex. No. 1. Other than the breakout rooms, the 1st floor rooms at issue were used for homework. Also offered at different times in the rooms were drug awareness and abstinence workshops, arts and crafts, discussion groups, career development, community involvement, cultural and educational programs and character-building programs. Tr. pp. 19-21, 23. Sign-in sheets for various rooms, used during 2003, the period at issue in this hearing, were offered into evidence by Family Focus. App. Ex. No. 1. I conclude that Family has demonstrated, through the testimony of Ms.

Avery and the sign-in sheets, evidence sufficient to warrant exempting 1st floor rooms 103, 104, 105, 108 and 109 for 100% of the 2003 assessment year.

Rooms 204 and 205 were leased to “Evanston Black Cats Wrestling Club” (the “Club”) in 2003. According to Ms. Hill’s testimony, the purpose of the Club is to provide recreational opportunity to youth as a means of instilling a deep abiding love for fitness, character, honesty and perseverance, as well as concern for citizenship, controlled behavior and sportsmanship. The Club helps children with character building, discipline, conflict resolution and decision-making. Tr. pp. 26, 29.

In exemption cases, the applicant bears the burden of proving by “clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist. 1991). Sandra Hill, who testified about the Club, did not begin working for Family Focus until 2004. Tr. p. 23. She testified that to her knowledge, the Club paid \$1 in rent in 2004, but she could not testify as to how much rent was paid in 2003, the year at issue in this case. Tr. pp. 29-30. No organizational documents for the Club were admitted into evidence. The lease between Family and the Club was not admitted into evidence. With regard to 2nd floor rooms 204 and 205, insufficient evidence was presented for me to conclude that these rooms should be exempt from property taxes for the 2003 assessment year.

WHEREFORE, it is recommended that the Department’s determination of June 3, 2005 be affirmed for Cook County P.I.N. 10-13-201-027 with the exception of 1st floor rooms 103, 104, 105, 108 and 109 and a proportionate amount of land and parking, which should be exempt for 100% of the 2003 assessment year.

Kenneth J. Galvin
Administrative Law Judge

December 11, 2006